

DOCUMENT #: EO-97-001-PP
(Supersedes EO-95-002-PP)

TITLE:

Preparation of Environmental Impact Reports Using a Third Party Memorandum of Understanding

AFFECTED
PROGRAMS:

Hazardous Waste Management Program
Science, Pollution Prevention and Technology Program
Site Mitigation Program
Office of Legal Counsel and Criminal Investigations

This policy and procedure memorandum implements the requirements of the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq.)

PURPOSE:

This memorandum establishes the Department of Toxic Substances Control (DTSC) policy and procedures relating to the preparation of Environmental Impact Reports (EIR) through the execution of a third party Memorandum of Understanding (MOU) when DTSC is the Lead Agency during the permit process.

BACKGROUND:

Certain projects carried out or approved by DTSC may necessitate preparation of an EIR if the project will or may have a significant effect upon the environment. Generally, this determination is made following a preliminary review of a project application or upon completion of an Initial Study. (Note: There are certain projects which require the Lead Agency to prepare an EIR. For specific information refer to section 21151.1 of the Public Resources Code)

As provided by section 15084 (d) of title 14 of the California Code of Regulations, DTSC may choose one of the following arrangements or a combination of them for preparing a draft EIR:

- 1) Preparing the draft EIR directly with its own staff;
- 2) Contracting with another entity, public or private, to prepare the draft EIR;
- 3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person;
- 4) Executing a third party contract or MOU with the applicant to govern the preparation of the draft EIR by an independent contractor; or
- 5) Using a previously prepared EIR.

THIRD PARTY MOU

Preparation of the EIR: *When DTSC is determined to be the Lead Agency, DTSC may execute a third party MOU with the applicant to govern the preparation of a draft and final EIR by an independent contractor*

A boilerplate MOU is included as Attachment A and shall be used when executing a MOU with a project applicant. The MOU contains language providing specific procedural requirements to be administered and adhered to between DTSC, the applicant and the third party contractor. Also, a sample letter providing notification to the applicant that an EIR is required prior to DTSC making a final permit decision is included as Attachment B.

ROLES & RESPONSIBILITIES

Project Manager: It is the responsibility of the project manager to contact the Office of Program Audits and Environmental Analysis (OPAEA) during the early stages of project MOU development so that the project can be tracked and assistance scheduled accordingly.

The project manager must notify the project applicant of a DTSC decision that an EIR will be necessary and may be completed by a contractor through a third party MOU. In addition, the project manager shall be responsible for monitoring the progress of the applicant and contractor in meeting the provisions of the MOU.

The project manager is responsible for contacting affected agencies concerning Lead Agency status and in determining the scope of a project for CEQA purposes.

The project manager shall ensure that all content requirements of a draft EIR are included in the document and monitor the adequacy of all information prepared by a third party contractor.

Program Branch Chief: The Program Branch Chief for the project shall be responsible for approving the MOU, the final EIR and the contents therein.

OPAEA: OPAEA is responsible for providing CEQA consultation, technical assistance and guidance to DTSC program staff during early project development and its implementation to ensure compliance with the provisions of CEQA.

IMPLEMENTATION:

In conjunction with all other CEQA policy and procedures established by DTSC, the policies and procedures contained herein shall be followed by DTSC's Hazardous Waste Management Program and Science, Pollution Prevention and Technology Program when DTSC is the Lead Agency during the permit process. Additional assistance concerning this memorandum, CEQA procedure or any necessary forms may be obtained by contacting the OPAEA at 322-8162 or CALNET 492-8162.

CONTACT:

Office of Environmental Analysis, Regulations & Audits

400 P Street, 4th Floor

P.O. BOX 806

Sacramento, California 95812-0806

(916) 322-8162 CALNET 8-492-8162

Original Signed By:
Robert P. Hoffman,
Chief Counsel
March 21, 1997

Date

Robert P. Hoffman
Chief Counsel

ATTACHMENT A

**Document #EO-97-001-PP
(Supersedes EO-95-002-PP)**

MEMORANDUM OF UNDERSTANDING

between

DTSC

and

[applicant name]

WHEREAS, [applicant name] has submitted an application for a permit for operating a hazardous waste facility under the requirements of State law for its facility located at [street address, city & state]; and

WHEREAS, DTSC is required under the California Environmental Quality Act (CEQA) to consider environmental impacts prior to approving or disapproving the permit application; and

WHEREAS, DTSC is the Lead Agency under CEQA and has made a determination that an Environmental Impact Report (EIR) is required; and

WHEREAS, the Lead Agency is empowered to execute a Memorandum of Understanding (MOU) with the applicant to govern preparation of a draft EIR by an independent contractor; and

WHEREAS, State law provides that the applicant shall be liable for the costs of preparation of an EIR; and

WHEREAS, in the interest of expediting the CEQA process, [applicant name] has decided to enter into an agreement with a consultant for the preparation of an EIR for said permit application subject to certain conditions;

NOW THEREFORE, it is hereby agreed by DTSC and [applicant name] as follows:

1. Definition of Terms:

- | | |
|---------------------|--|
| a) Department: | The California DTSC |
| b) Project Sponsor: | <u>[applicant name]</u> |
| c) Consultant: | The company with which the Project Sponsor contracts for preparation of the environmental impact report for the project. |
| d) Branch Chief: | <u>[Branch Chief name]</u> , Branch Chief of the <u>[name of DTSC Branch, Region]</u> , DTSC. |
| e) Contract: | Contract between the Project Sponsor and the Consultant for the preparation of an EIR for the project. |
| f) EIR: | Environmental Impact Report |
| g) MOU: | Memorandum of Understanding |

- h) Parties: DTSC and [applicant name].
- i) Project: The permit under consideration for the hazardous waste facility located at [street address, city & state].

2. Scoping of EIR and Statement of Work:

DTSC shall be responsible for providing a preliminary scope of the EIR to the Project Sponsor.

The Project Sponsor shall prepare a draft Statement of Work based on the preliminary scope of the EIR, the Project proposal and all other provisions of this MOU applicable to the contract.

DTSC shall review the draft Statement of Work. DTSC will ensure the Project Sponsor has a minimum of 10 working days to comment on any proposed modifications to the draft Statement of Work. DTSC shall retain final authority to approve the Statement of Work.

3. Consultant Selection:

The Project Sponsor shall consult with DTSC prior to selecting a Consultant. DTSC recommendation and approval of the selection of the Consultant shall be based on an evaluation of the Consultant's technical approach, conformance with the conditions of this MOU, CEQA qualifications, cost estimates, and potential for conflict of interest, and upon prior experience working with the consultant. Such evaluation shall be regarded by DTSC and the Project Sponsor as confidential.

4. Contract:

Upon selection of a Consultant, the Project Sponsor and the Consultant shall prepare a draft Contract for completion of the EIR incorporating the approved Statement of Work.

The Project Sponsor shall consult with DTSC on the content of the Contract and DTSC shall have the opportunity to suggest modifications to the Contract. Such modifications shall be based only on the requirements of this MOU and CEQA.

5. Project Sponsor Responsibilities:

The Project Sponsor shall have the opportunity to review the draft EIR as accepted by DTSC from the Consultant and shall have a minimum of thirty (30) working days in which to provide written comments to the Branch Chief. DTSC, however, shall retain full discretion to decide whether any comments from the Project Sponsor will be incorporated into the draft EIR released to the public.

The Project Sponsor shall be responsible for amending the Contract as necessary upon written request from DTSC.

6. Consultant Responsibilities:

The Consultant shall prepare the EIR to the satisfaction of DTSC.

The Consultant shall deliver all draft and final reports, documents, drawings and other technical or substantive communications required under the terms of the Contract, except administrative communications such as invoices and remittances of funds, directly to DTSC.

The Consultant may supply technical or substantive reports directly to the Project Sponsor upon prior approval from DTSC.

The Consultant shall not disclose any information concerning the Project to any person other than representatives of DTSC and Project Sponsor except with prior written approval of the Branch Chief or designated representative.

7. DTSC Responsibilities:

The final content of the EIR is the sole responsibility of DTSC as the Lead Agency for the Project under CEQA.

DTSC retains final authority over the scope, content, and wording of all documents prepared under the Contract.

DTSC, and not the Consultant, shall be responsible for forwarding any reports, drawings and technical or substantive communications required under the terms of the Contract, as it deems necessary, to the Project Sponsor. DTSC reserves the right to withhold any of these communications from the Project Sponsor.

8. Communications:

Direct communications between the Consultant and the Project Sponsor shall be limited to information gathering and other activities required to expedite preparation of the EIR. DTSC shall be invited to participate in all meetings that occur between the facility and the consultant. DTSC will be provided a written summary of all direct communication that occurs without the participation of DTSC staff on a monthly basis for the duration of this MOU.

9. Status of Products:

The draft and final EIR, support data, and all other documents prepared and developed under the Contract are the property of DTSC.

DTSC shall handle any materials that are designated as Confidential or Proprietary in accordance with DTSC current applicable trade secret policy.

All documents prepared under the Contract shall carry DTSC name on the cover and title page.

The Project Sponsor's name shall not appear on the cover or the title page except as part of the Project title.

The Consultant's name may appear in byline on the title page, and a list of the Consultant's personnel contributing to the preparation of the document shall appear in the appendix of the documents. No other references to the Consultant will be permitted in the documents.

Nothing in this MOU shall compromise, affect in any way or require reassertion of claims of confidentiality already made by the Project Sponsor.

10. Exclusive Services:

For the duration of the MOU and for a period of one year after the completion of the MOU, the Project Sponsor will notify DTSC at least thirty (30) days prior to employing the consultant on any matter relating to the project, other than activities under this MOU.

By executing this agreement, the Project Sponsor hereby expressly acknowledges that employment of the consultant by the Project Sponsor on any matter directly or indirectly pertaining to the project other than the activities under this MOU, may constitute a conflict of interest. The Project Sponsor hereby agrees to release DTSC from any and all claims, liabilities, obligations and actions now existing or arising in the future whether known or unknown in any way related to the consultant's performance of activities under this MOU.

11. Contract Changes

The following changes to the terms of the Contract shall be subject to prior written approval by the Branch Chief or designated representative:

- a) Additions, deletions, or substitutions of the Consultant's key personnel or subcontractors working on the draft and final EIR preparation; and
- b) Alterations in the scope of work, program schedule, or other aspects of the work program.

If DTSC, with or without the recommendation of the Consultant, determines that work is required in addition to that specified in the Contract in order to comply with the requirements of CEQA, the Project.

Sponsor shall amend the Contract to broaden the work program as necessary.

12. Amendments to MOU:

The Parties agree that if it is necessary to amend any provision of this MOU, it may be amended.

13. Termination of MOU:

Failure of the consultant to operate consistent with the provisions of this MOU, or to provide complete work products to the satisfaction of DTSC on a timely basis, may result in the unilateral termination of this MOU by DTSC. Upon termination of this MOU, DTSC may provide the project sponsor the opportunity to hire a new consultant and enter into a new MOU. If the project sponsor declines to enter into a new MOU, DTSC may proceed toward denial of the project.

14. Contact Person:

The contact person at DTSC shall be _____, or such other person at an equivalent level or above, as may be designated by the Branch Chief.

The authorized representatives of DTSC and Project Sponsor have agreed to the above terms and signed this MOU:

DTSC

PROJECT SPONSOR.

By:_____

By:_____

Dated:_____

Dated:_____

ATTACHMENT B

**Document # EO-97-001-PP
(Supersedes EO-95-002-PP)**

**LETTER TO APPLICANT
REQUESTING PREPARATION OF AN EIR
(Mandatory)**

Dear _____,

The Department of Toxic Substances Control (DTSC) is in receipt of your application for a hazardous waste facilities permit for your operation located at (address) (city), California. Based on a preliminary review of your application, DTSC has concluded that it will be necessary for an environmental impact report (EIR) to be prepared prior to DTSC making a final permit decision affecting your facility. The preparation of this EIR is a mandatory requirement under section 21151.1 of the Public Resources Code (PRC).

To facilitate development of the EIR, DTSC is authorized under section 15084 of Title 14 of the California Code of Regulations to execute a third party Memorandum of Understanding (MOU) with a project applicant to govern the preparation of a draft and final EIR by an independent contractor.

Enclosed is the MOU which constitutes the formal agreement for preparation of the required draft and final EIR. We are requesting that the MOU be counter-signed by the representative of your firm authorized to sign such an agreement.

Until such time as the counter-signed MOU is returned to this office, DTSC will continue to review your permit application for a determination of completeness and will be contacting you regarding submittal of any necessary information.

If our office can be of further assistance in providing information concerning the EIR preparation protocol, please contact _____ at () _____.

Sincerely,

Project Manager

cc: Office of Program Audits and Environmental Analysis
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806